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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,521	02/12/2004	Jessica Baker Flechtner	8449-405-999	4151

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JONES DAY  
222 EAST 41ST ST  
NEW YORK, NY 10017

EXAMINER

BLUMEL, BENJAMIN P

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/776,521

**Applicant(s)**

FLECHTNER ET AL.

**Examiner**

Benjamin P. Blumel

**Art Unit**

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,11,13 and 27-44 is/are pending in the application.
- 4a) Of the above claim(s) 29, 30, 32, 33, 36 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,11,13,27,28,31,34,35 and 38-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/10/06 &amp; 7/14/06</u> .   | 6) <input checked="" type="checkbox"/> Other: <u>Notice to Comply</u> .     |

### **DETAILED ACTION**

Applicant is notified that Benjamin P. Blumel, whose contact information is stated below, will conduct further examination of the instant application.

#### ***Election/Restrictions***

During a telephone conversation between previous examiner Peter Reddig and Richard Edman on behalf of Adriane M. Antler the Attorney of Record on August 28, 2006 a provisional election was made with traverse to prosecute the invention of a herpes virus as an infectious agent, claims 1 and 11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 29, 30, 32, 33, 36 and 37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant's election of group I in the reply filed on July 14, 2006 and herpes virus as an infectious agent in a telephone conversation explained above is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement or the telephone conversation, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, election/restriction is made FINAL.

#### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on July 14 of 2006 was filed. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. Furthermore, the IDS submitted on April 10, 2006 indicates on page one of eight, that references A1-

19, B1-17 and C1-113 are listed and copies of all NPL documents and reference A1 have also been submitted for review. However, the list containing references A1-19 and B1-4 (sheet 1 of 7) and a copy of reference A1 are missing from record. The examiner acknowledges receipt of references B5-B17 and C1-C113 and these references are being considered further by the examiner. In conclusion, the corresponding IDS documents have been reviewed and a copy is included with this Office Action.

### ***Objections***

#### **Specification**

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth below or on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. The specification is objected to because the drawing descriptions do not indicate which SEQ ID No: pertains to each amino acid sequence depicted in drawings 1-7.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 11, 13, 27, 28, 31, 34, 35 and 38-44 are rejected under 35

U.S.C. 102(e) as being anticipated by Wieland et al. (US PGPub# 2004/0071656).

The claims are drawn to a hybrid antigen composition of an antigenic domain of a herpes virus linked to hsc70, a member of the heat shock protein family, via a non-covalent interaction with Asn Leu Leu Arg Leu Thr Gly Trp or NLLRLTGW (SEQ ID No. 417). This composition also contains adjuvants.

Wieland et al. teaches a composition of a heat shock protein non-covalently linked to an antigen via a polypeptide that can be used in inducing an immune response in a mammal. One of the polypeptides listed is SEQ ID No. 4, NLLRLTGW, which is homologous to SEQ ID No. 417 of the claimed invention. Wieland et al. further discloses an infectious disease antigen such as herpes virus as part of a hybrid molecule non-covalently linked to a heat shock protein such as hsc70, which also function as an adjuvant. *See paragraphs 12, 13, 19, 20, 64, 65, 113, 130 and 147.*

### ***Summary***

No claims are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin P. Blumel whose telephone number is 571-272-4960. The examiner can normally be reached on M-F, 8-4:30.

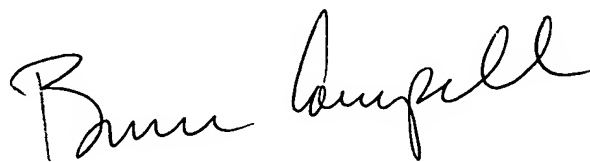
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-1600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Benjamin Blumel  
Patent Examiner



BRUCE R. CAMPELL, PH.D  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

<b>Notice to Comply</b>	<b>Application No.</b> 10/776,521	<b>Applicant(s)</b> Flechtner et al.	
	<b>Examiner</b> Benjamin Blumel	<b>Art Unit</b> 1648	

**NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES**

Applicant must file the items indicated below within the time period set the Office action to which the Notice is attached to avoid abandonment under 35 U.S.C. § 133 (extensions of time may be obtained under the provisions of 37 CFR 1.136(a)).

The nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements for such a disclosure as set forth in 37 C.F.R. 1.821 - 1.825 for the following reason(s):

- ☐ 1. This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998).
- ☐ 2. This application does not contain, as a separate part of the disclosure on paper copy, a "Sequence Listing" as required by 37 C.F.R. 1.821(c).
- ☐ 3. A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e).
- ☐ 4. A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing."
- ☐ 5. The computer readable form that has been filed with this application has been found to be damaged and/or unreadable as indicated on the attached CRF Diskette Problem Report. A Substitute computer readable form must be submitted as required by 37 C.F.R. 1.825(d).
- ☐ 6. The paper copy of the "Sequence Listing" is not the same as the computer readable form of the "Sequence Listing" as required by 37 C.F.R. 1.821(e).
- ☒ 7. Other: The disclosure and claims are missing numbers SEQ ID NO:s, see attached Action under Sequence Compliance.

**Applicant Must Provide:**

- ☐ An initial or substitute computer readable form (CRF) copy of the "Sequence Listing".
- ☐ An initial or substitute paper copy of the "Sequence Listing", **as well as an amendment specifically directing its entry into the application.**
- ☐ A statement that the content of the paper and computer readable copies are the same and, where applicable, include no new matter, as required by 37 C.F.R. 1.821(e) or 1.821(f) or 1.821(g) or 1.825(b) or 1.825(d).

For questions regarding compliance to these requirements, please contact:

For Rules Interpretation, call (703) 308-4216 or (703) 308-2923

For CRF Submission Help, call (703) 308-4212 or 308-2923

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